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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No.

W. J. DILLNER TRANSFER COMPANY,
Appellant,

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL,
Appellees.

Appeal from the Supreme Court of Pennsylvania. From the Pittsburgh District.

JURISDICTIONAL STATEMENT

I.

THE OPINION BELOW BY THE PENNSYLVANIA SUPERIOR COURT IS REPORTED AT, 175 SUPERIOR COURT REP. 472.

Copy of the opinion is annexed hereto as appendix A. The Supreme Court of Pennsylvania denied a petition for leave to appeal, "Per Curiam." Appellant contends that this honorable Court has jurisdiction hereof and makes this statement in compliance with the Revised Rules of the Court.

II.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

(A) Nature of Proceeding

This case involves the imposition of cease and desist orders against Appellant for alleged violation of its Certificates of Public Convenience and Necessity, under the Public Utility Law of Pennsylvania, without according to Appellant the protection of due process of law and equal protection of the law as required by the 14th Amendment. The proceedings were instituted under appropriate sections of the said Public Utility Law, hereafter quoted.

(B) Jurisdictional Dates

The opinion and judgment of the Superior Court was entered July 13th, 1954. The Pennsylvania Supreme Court denied the petitions for leave to appeal on Sept. 27th, 1954, On Oct. 5th the Pennsylvania Supreme Court granted Appellant's petition to bring the record back to that Court for the purpose of prosecuting this appeal. On Dec. 24th Appellant filed its Notice of Appeal in the office of the Prothonotary in Pittsburgh in accord with Rule 10 of the Revised Rules of this Court. The Prothonotary has now certified the record to this Court.

(C) Statutory Basis for Jurisdiction

Jurisdiction of this honorable Court to review the decisions and judgments here appealed from is based upon Section 1257(2) of Title 28, U. S. Code.

(D) Cases Believed to Sustain Jurisdiction

The questions presented here are clearly defined and there is no element of dispute as to what was done by the Appellee Commission.

In *Morgan* v. *United States,* 304 U. S. 1 this Court in two opinions (one on petition for reargument) held that procedure such as that invoked against this appellant constituted a vital defect and a denial of due process of law.

In the Chinese case *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, this Court again upheld the right to due process of law and condemned the practice of permitting the same person to prosecute and judge.

In *Ohio Bell Telephone Co.* v. *Ohio Public Utilities Commission* 301 U. S. 292 this Court dealt with a situation almost in similar circumstances as we have here. The Appellee Commission based its case upon records taken from other cases and files upon which Appellant had no opportunity to cross examine the persons involved as prior witnesses. There is no room for dispute concerning the manner in which Appellant has been subjected to arbitrary procedure.

The desist order is so broad in scope as to violate the "due process" clause of the 14th Amendment. *Russell C. House Transfer and Storage Co.* v. *U. S.* 189 Fed. 2nd 349.

We take the position that denial of due process of law and equal protection of the law is just as vital to the aggrieved party, whether it be covered by the shield of the 5th or the 14th Amendement to the Constitution of the United States.

(E) Statutes Involved

Appellee Commission claims that the Pennsylvania Public Utility Law, empowers it to deprive persons of rights without regard to the fundamental principles of due process of law. We submit that any such law would be unconstitutional.

The relevant sections of the Pennsylvania Public Utility Law follow:

> Section 1001. Complaints.—The commission, or any person, corporation, or municipal corporation having

an interest in the subject matter, or in any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. Any public utility, or other person, or corporation, subject to this act, likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The commission, by regulation, may prescribe the form of complaints filed under this section.

SECTION 1005. Decisions by Commission.—After the conclusion of the hearing, the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence. A copy of such order, certified under the seal of the commission, shall be served by registered mail upon the person, corporation, or municipal corporation against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorney. Such order shall take effect and become operative as designated therein, and shall continue in force either for a period which may be designated therein, or until changed or revoked by the commission. If an order cannot, in the judgment of the commission, be complied with within the time designated therein, the commission may grant and prescribe such additional time as, in its judgment, is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

SECTION 1008. Investigations.—The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this act. In conducting such investigations the commission may proceed, either with or without a hearing, as it may

deem best, but it shall make no order without affording the parties affected thereby a hearing.

We urge the view that where the word hearing is used in the foregoing sections, it must mean a fair, adequate and impartial hearing and not a mere formality.

Although a Petition to Remand was argued at length, including the question of trial by jury the Court below did not discuss the following section in its opinion. The Public Utility Law clearly reserves trial jury of factual issues.

> SECTION 1110. Right to Trial by Jury.—Nothing in this act contained shall be construed to deprive any party, upon any such appeal and judicial review of the proceedings and orders of the commission, of the right to trial by jury of any issue of fact raised thereby or therein, where such right is secured either by the Constitution of the Commonwealth or of the United States, but in every such case such right of trial by jury shall remain inviolate: Provided, however, That when any appeal is taken, such right shall be deemed to be waived upon all issues, unless expressly reserved in such reasonable manner as shall be prescribed by the Superior Court.

We have been unable to find any substantial judicial interpretation of this section.

Appellant, through its predecessor, was in business prior to Jan. 1, 1914, the effective date of the first Public Service Law of Pennsylvania and one of the certificates here in dispute was based upon that early right.

We have been unable to locate any specific rules of the Superior Court relating to the above quoted section.

III.

QUESTIONS PRESENTED

The questions presented upon this appeal arise from interpretation by the Court below, of the Pennsylvania Public Utility Law as follows:

(a) Does the statute in question operate to deprive appellant of the benefit of due process of law by permitting the same person or persons who prepared the complaint or Rule against appellant, and who conducted and prosecuted the hearings thereon, to also prepare and submit the decision in the case, for the Pennsylvania Public Utility Commission, without notice to appellant's counsel and thus withholding opportunity to file exceptions or a brief in opposition to the proposed decision?

(b) Does the statute authorize the Pennsylvania Public Utility Commission and the Courts below to arbitrarily ignore the prior interpretative decisions by the said Commission and to subject appellant to restrictions or penalties, although the Commission had previously held otherwise in a substantially similar case?

(c) Does the statute authorize the Commonwealth of Pennsylvania to deprive appellant of vested rights which it had prior to the enactment of the statute, and in substance to repudiate the certificate made by the Public Utility Commission or its predecessor in office?

(d) Did the Courts below fail to protect appellant's right to due process of law and equal protection of the law as required by the 14th Amendment to the Constitution of the United States?

IV.

STATEMENT OF THE CASE

Appellant is a motor carrier of property for hire in both intrastate and interstate commerce and its operating rights date back to 1910, before the Public Service Law of Pennsylvania was enacted. The business was incorporated in 1942 but the Dillner family remained as sole owners. In 1932 the Public Service Commission of Pennsylvania began to regulate motor truckers and the Dillners were awarded one of the earliest certificates, which is now in dispute in the Harrisburg case.

This case involves a certificate granted to Appellant in 1947. A dispute arose concerning the interpretation of the language used and the Commission's Counsel prepared a Rule to show cause why it should not be punished, against Appellant, which was adopted by the Commission. At the hearings Counsel for the Commission prosecuted the Rule and prepared the final decision and order which was submitted to the Commission without notice to Appellant's Counsel. The Examiner who heard the case made no proposed findings. The decision and order submitted by Counsel for the Commission was adopted and an appeal was taken by Appellant. See Appendix B annexed hereto.

V.

THE FEDERAL QUESTIONS INVOLVED ARE SUBSTANTIAL

The questions involved are substantial, indeed they are fundamental.

Appellant posed a question as to the fairness of permitting the same persons to institute, prosecute and determine a quasi-criminal proceeding and the Appellee Commission replied to the Court below, as follows:

> "The averment that the Commission acts as complainant prosecutor, judge and jury in this proceeding is recognized and accepted procedure in administrative proceedings. The ultimate answer to such criticism is the the administrative procedure provides adequate appellate review."

This attitude indicates a new standard of justice.

The question of borrowing and transplanting evidence from other cases into this case remains unanswered. Appellees did not attempt to justify or excuse such practice. Appellant was faced with some old transcripts of testimony and letters. It was impossible to cross examine the persons involved in these papers forced upon us as evidence.

This Court has adhered to the rule that certificates of public convenience, once granted, may not be enlarged or restricted by subsequent interpretation where the language used is not ambiguous. A certificate is for the information and protection of the public. Such rulings have been in connection with interstate certificates but the fundamental law should apply to all such certificates whether intrastate or interstate.

Opinion of the Superior Court

The opinion of the Pennsylvania Superior Court is annexed hereto. The findings of the Appellee Commission are

quoted at length but no substantial appraisal was made of the voluminous evidence presented in behalf of Appellant. The Court held that if the record contained any evidence to support the findings of the Commission the Court would "affirm," which they did.

The Court brushed aside with slight notice the objections argued by Appellant's Counsel based upon Constitutional questions. Upon argument the Court seemed to take the position that the Appellee Commission was not bound by the rigid requirements of due process as provided in the 14th Amendment.

Conclusion

Appellant has been deprived of the right and benefit of due process of law. If Appellant had been accorded the simple but basic right to present exceptions to the final decision submitted by the Commission's Counsel to the Commission the present situation of hardship and confusion would probably have been avoided. This Court should act to halt these violations of fundamental rights. The decision of this Court in *Morgan* v. *U. S. supra*, fits the situation perfectly.

If the elementary rules of evidence had been observed by the Commission there would have been very little evidence in the record against Appellant. Jurisdiction should be noted.

Respectfully submitted,

J. Paul Rupp,
Ernie Adamson,
16 N. 2nd St.,
Harrisburg, Pa.,
Attorneys for Appellant.

Feb. 18th, 1955.

Bailey and Rupp,
of Counsel.

APPENDIX "A"

Opinion of Pensylvania Superior Court

W. J. Dillner Transfer Company, Appellant, v. Pennsylvania Public Utility Commission (No. 2)

Public Utility Law—Construction by Commission of its own orders — Judicial review — Practice — Rehearing — Rights of motor carrier—"Heavy-hauling" authority.

Opinion by Rhodes, P. J., July 13, 1954:

The Pennsylvaina Public Utility Commission by its order of August 11, 1952, directed W. J. Dillner Transfer Company, a motor carrier, to "cease and desist the transportation of sheet steel and coils of steel, or any other transportation not authorized by its certificates of public convenience."

Among Dillner's certificated rights is the following grant (A. 61744, Folder 3) by order of the Commission dated May 19, 1947:

"To transport as a Class C carrier, property in shipments weighing five thousand (5,000) pounds or more, which because of its size or weight requires special handling and the use of special equipment such as trucks having winches or special equipment attached, or trucks of special body construction, or pole trailers, or drop-frame trailers, from points in the City of Pittsburgh, Allegheny County, and within a radius of fifty (50) miles thereof, to other points in Pennsylvania." This order further provided that Dillner's "application insofar as it refers to all other transportation be and is hereby refused for lack of necessity."

The Commission, on January 16, 1950, issued a rule against Dillner to show cause why its certificate of public convenience, at A. 61744, Folder 3, should not be canceled or other penalties imposed for violation of its certificate. The Commission charged Dillner with alleged violations on December 3, 1949, and December 19, 1949. On December 3,

1949, Dillner transported twenty-one coils of steel from Carnegie-Illinois Steel Corporation, Irwin Works, Dravosburg, Pennsylvania, to Enamel Metal Strip Corporation, Allentown, Pennsylvania; and on December 19, 1949, Dillner transported sheet steel in three tractor-trailer units from Carnegie-Illinois Steel Corporation, Irwin Works, to Budd Company, Philadelphia, Pennsylvania. The Commission in its rule charged that such transportation of steel was in violation of Dillner's certificate of public convenience because "the property transported . . . did not require special handling or the use of special equipment, and . . . none of the . . . tractor-trailer trucks were of special body construction or equipped with winches or special equipment."

Dillner admitted, in its answer to the rule, the shipments of steel set forth in the Commission's rule; but Dillner denied, however, that such shipments were in violation of its certificated rights, and averred that the shipments were of such weight as to require special equipment, and that the vehicles were of special body design. Dillner further alleged in its answer that the shipments were within its certificated rights at A. 61744, Folder 3, as a "heavy-hauler"; that it had full right and authority to transport the shipments in issue under its certificates at either Folder 2 or Folder 3, A. 61744; and that at Folder 2, A. 61744, it had the certificated right to transport "property" from points in Allegheny County to other points in Pennsylvania subject to certain restrictions as to "goods" and "merchandise."

The Commission thereafter, upon petitions filed with it, permitted certain motor carriers (Modern Transfer Company, Inc., Highway Express Lines, Inc., Philadelphia-Pittsburgh Carriers, Inc., Kramer Brothers Freight Lines, Inc., and Lancaster Transportation Company) to intervene in support of the Commission's rule; and two carriers (John Benkart & Sons Company and DeBolt Transfer) having heavy-hauling rights similar to Dillner were per-

mitted to intervene for the purpose of supporting Dillner's position that the transportation in question came within the scope of Dillner's certificate.

Several hearings were held by the Commission at which witnesses testified to the effect that the transportation of coils of steel and sheet steel required neither "special handling" nor "special equipment." There was also testimony that the vehicles used by Dillner in the questioned haulage were similar in type and equipment to those used by common carriers for the transportation of general commodities. On behalf of Dillner there was evidence presented to the effect that shipments such as those here involved could not be loaded manually, and that the trucks used to transport the steel were specially designed for such purpose.

The Commission in its order of August 11, 1952, after reviewing the original application proceeding at A. 61744, Folder 3, concluded that Dillner's certificate did not comprehend the authority claimed. The Commission ruled that the transportation of coils of steel and sheet steel here involved did not require special handling or the use of the special equipment within the limited rights granted under the certificate, commonly referred to as "heavy-hauling" rights. The Commission also said in its order:

"The type of service offered by and the rights granted to the so-called 'heavy-haulers' has been limited to the transportation of extremely heavy or bulky machinery, equipment or materials such as are commonly used in or in conjunction with construction projects. The transportation of such property is a specialized transportation service, which requires for its efficient conduct inherently special vehicular equipment. The temporary or permanent attachment of blocks, chocks or chains to an otherwise ordinary truck or trailer does not transform it into such special equipment."

Accordingly, the Commission made absolute its rule to show cause, and entered its order directing Dillner to

"cease and desist the transportation of sheet steel and coils of steel, or any other transportation not authorized by its certificates of public convenience." Dillner filed petitions for rehearing which were denied by the Commission. Dillner then took the present appeal.

The determinative question is whether the transportation of coils of steel and sheet steel of the size and weight here involved required special handling and the use of special equipment.[1] Under Dillner's certificate there must be both special handling and the use of special equipment. Our inquiry is limited as to whether there was substantial evidence to support the Commission's findings and conclusions. Section 1107 of the Public Utility Law of May 28, 1937, P. L. 1053, as amended, 66 PS §1437; *Pittsburgh & Lake Erie Railroad Company v. Pennsylvania Public Utility Commission,* 170 Pa. Superior Ct. 411, 415, 416, 85 A. 2d 646; *Zurcher v. Pennsylvania Public Utility Commission,* 173 Pa. Superior Ct. 343, 347, 98 A. 2d 218. We shall therefor limit our determination to the exact issue before us.

In the absence of compelling reasons, we will not set aside the action of the Commission in interpreting the extent and nature of certificates of public convenience issued by it. Ordinarily, a court will not invalidate a construction by an administrative agency of its own orders unless the result is clearly erroneous, arbitrary, or unsupported by evidence.

---

[1] The Commission in its order of August 11, 1952, found:

"The coils of steel were transported in a tractor-trailer unit, described as an open-top vehicle. The coils of steel were approximately 36 inches wide and 36 inches in diameter, weighed 2,300 pounds, and were blocked with ordinary 8-inch wooden blocks curved to fit the coil.

"The sheet steel, in bundles weighing 4,800 to 11,000 pounds, was transported in three tractor-trailer units described as regular flat body trailers. The bundles of sheet steel were secured by what is commonly known as chain binders; the chains being drawn through the holes along the sides where stake racks are usually set."

42 Am. Jur., Public Administrative Law, §101, p. 431; *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413, 414, 65 S. Ct. 1215, 89 L. Ed. 1700; *W. J. Dillner Transfer Co. v. Pennsylvania Public Utility Commission (No. 1)*, 175 Pa. Superior Ct. 461, A. 2d . As an administrative body issuing a certificate of public convenience the Commission is especially qualified to interpret and construe the original grant. The Commission is naturally cognizant of the factual and technical matters upon which such construction depends. However, the Commission's interpretation of its own rules and regulations is not conclusive on the courts although it may be persuasive. *Lancaster Transportation Co. v. Pennsylvania Public Utility Commission*, 169 Pa. Superior Ct. 284, 292, 82 A. 2d 291. Thus, if the evidence supports its findings the Commission may determine what comes within the "heavy-hauling" authority grant and what may be transported by carriers having the right to transport general property.

In the present proceeding the Commission, in its construction of the authority granted to Dillner, considered the general language used as well as the history and record of the application proceedings. The Commission pointed out that Dillner's application filed with the Commission on August 13, 1945, at A. 61744, Folder 3, consisted of two parts. Dillner there sought a certificate of public convenience "to transport by Motor Truck, from Pittsburgh and points within 50 miles thereof, to points in Pennsylvania, and vice versa, articles which require special service, handling or equipment, *also* castings, machinery, machines and parts thereof, metal pipe, plates, sheets, bars, billets, blooms, pigs, residues and ingots, in shipments weighing 5,000 lbs. or more." [Italics supplied.] The Commission by its order of May 19, 1947, granted Dillner, after hearing on its application, the right to transport as a Class C carrier, from the City of Pittsburgh and within a radius of fifty miles thereof to other points in Pennsylvania, property

which because of its size or weight required special handling and the use of special equipment, and refused the application in so far as it referred to other transportation. The Commission has held that on the evidence before it the transportation of coils of steel and sheet steel was not within the ambit of the heavy-hauling rights which had been granted to Dillner. In addition to its statement that ordinary trucks and trailers were not transformed into special equipment by the attachment of blocks or chains, the Commission pointed out that Dillner's heavy-hauling rights were made state-wide to compensate the carrier for purchasing the special equipment required, and that it was necessary to draw a definite distinction between special authority permitting "heavy-hauling" and authority granting generally the right to haul property, goods, or commodities.

The record clearly discloses that the transportation of the coils of steel and the sheet steel did not require special handling and the use of special equipment, and that therefore it was not within the scope of Dillner's certificated rights at A. 61744, Folder 3, but rather within the requested authority which was denied by the Commission.

Herbert E. Rutrecht, sales manager of Modern Transfer Company, Inc., testified that the vehicle used by Dillner in transporting coils of steel on December 3, 1949, was an open-top vehicle of the same type used by all common carriers for the transportation of general commodities. He further testified that Modern Transfer Company, Inc., operates approximately forty such open-top trailers, and that they were used for general commodity purposes. Dillner agreed that the vehicle used to transport the coils of steel "did not have chains and binders attached, nor any other special equipment other than a forward reinforced bulkhead attached."

An inspector for the Pennsylvania Public Utility Commission testified concerning the three vehicles used by Dillner

to transport the sheet steel on December 19, 1949. He stated that these vehicles were flat-body trailers without "any contrivances of any kind," and that they could not be characterized as "special."

John M. Paterson, an officer of Highway Express Lines, Inc., testified that his company had been transporting steel and steel products for twelve years, and that it does not employ any special types of equipment for such transportation. He testified that coils of steel and sheet steel are hauled in normal open-top trailers which may be equipped with rigs for the insertion of chain binders. He also testified that equipment having reinforced bulkheads and anchoring devices for chain binders is not considered special equipment, and is used for the transportation of commodities which must be secured to the vehicle, and which are likely to shift.

I. C. Gutman, general manager of Modern Transfer Company, Inc., testified that in the transportation of steel his company used the general type of equipment in use in general commodity hauling. He further testified that the company tranported steel coils from Carnegie-Illinois Steel Corporation several times a week in the normal type of open-top van trailers, which are not special equipment.

James W. Cunnane, an official of Philadelphia-Pittsburgh Carriers, Inc., testified that his company hauled coils of steel and sheet steel in standard trailers, closed or open, without the use of any special type of equipment, without special handling, and without using special personnel; and that this carrier did not use chain binders in hauling steel although its vehicles were equipped with reinforced forward bulkheads which are standard.

J. J. McGary, traffic manager of Lancaster Transportation Company, testified that the company transports coils of steel and sheet steel with its regular equipment, that is, Fruehauf trailers, the same type of equipment as used in hauling other commodities without chains and binders.

It appears that the Carnegie-Illinois Steel Corporation loaded the four shipments, which were the subject of the Commission's rule to show cause, with its own overhead crane, and that it also furnished any blocks or cradles used to hold these loads in place.

On the record before us we are of the opinion that the interpretation placed by the Commission on its grant of authority to Dillner at A. 61744, Folder 3, was supported by substantial evidence, and that the cease and desist order was not erroneous as a matter of law, nor was it unreasonable or arbitrary.

The rule to show cause issued by the Commission set forth the specific violations of Dillner's certificated rights. Dillner received notice, and the answer filed by it disclosed that it was fully aware of the issue and charges made against it. The matter was considered at several hearings and much evidence was presented by the interested parties. We think the issue was clear, and that the findings of the Commission were sufficiently definite to dispose of the questions raised. Cf. *Ryan v. Pennsylvania Public Utility Commission,* 143 Pa. Superior Ct. 517, 521, 17 A. 2d 637. There was no denial of due process in this respect or in the manner the Commission functioned. See 42 Am. Jur., Public Administrative Law, §25, p. 315; *Humphrey v. United States,* 295 U. S. 602, 55 S. Ct. 869, 79 L. Ed. 1611, 1619.

We find no reversible error in the refusal by the Commission of Dillner's petition for rehearing. Dillner by its petition for rehearing sought the opportunity to present further evidence and to convince the Commission of error in its final order. The grant or the refusal of a petition for rehearing, or further hearing, is a matter within the discretion of the Commission. *Yellow Cab Co. v. Pennsylvania Public Utility Commission,* 161 Pa. Superior Ct. 41, 55, 54 A. 2d 301.

In its answer to the Commission's rule, Dillner claimed, at least inferentially, the right to transport the coils of steel

and sheet steel throughout Pennsylvania, under its authority at Folder 2 of A. 61744 which Dillner interpreted as giving the right to haul statewide all types of property or general commodities. This question was not further raised or passed upon by the Commission in the present proceeding. However, the matter has been decided adversely to Dillner in a separate complaint proceeding appealed to this Court in which the order of the Commission was affirmed. *W. J. Dillner Transfer Co. v. Pennsylvania Public Utility Commission (No. 1)*, 175 Pa. Superior Ct. 461, A. 2d .

APPENDIX "B"

Pittsburgh District

The Rule to show cause, against appellant, charged the illegal transportation of several loads of steel as follows:

> "It further appears that the property transported did not require special handling or the use of special equipment and that none of the said tractor-trailer trucks were of special body construction or equipped with winches or special equipment. It thus appears that both of said shipments were in violation of respondents certificated rights at A. 61744, at Folder 3."

Counsel for the Commission, who had prepared the Rule and prosecuted the Rule at the several hearings, then submitted without notice to appellants counsel, an order which was adopted by the Commission as follows:

> "It is ordered:
>
> 1. That the rule instituted on January 16, 1950, against W. J. Dillner Transfer Company, respondent, at A. 61744 Folder 3, be and is hereby made absolute.
>
> 2. That W. J. Dillner Transfer Company, respondent, its agents and employees, immediately cease and desist the transportation of sheet steel and coils of steel, or any other transportation not authorized by its certificates of public convenience."

Counsel for the Commission in submitting the proposed decision to the Commission neglected to include therein citations of two prior decisions of the said Commission which were favorable to and indeed almost controlling in behalf of appellant.

If Counsel for appellant had been accorded the opportunity to take exception to the proposed decision and order it is fair to assume that the Commission would have taken different action.

FILED
MAR 11 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. 600

W. J. DILLNER TRANSFER COMPANY,
Appellant

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.,
Appellees

(PITTSBURGH DISTRICT)

Appeal from the Supreme Court of the Commonwealth of Pennsylvania

MOTION TO DISMISS APPEAL

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1954

No.

W. J. Dillner Transfer Company,
Appellant

vs.

Pennsylvania Public Utility
Commission, et al.,
Appellees

I.
MOTION TO DISMISS APPEAL

Pennsylvania Public Utility Commission, by Jack F. Aschinger, Assistant Counsel, and Thomas M. Kerrigan, Acting Chief Counsel, moves the Supreme Court of the United States to dismiss the appeal of W. J. Dillner Transfer Company, from an order of the Pennsylvania Public Utility Commission as affirmed by the Superior Court of Pennsylvania in *W. J. Dillner Transfer Co. v. Pa. P.U.C., et al.*, 175 Pa. Superior Ct. 472, 107 A. 2d 164 (1954), the Supreme Court of Pennsylvania denying "Per Curiam" on September 27, 1954, the Petition of W. J. Dillner Transfer Company for Allowance of Appeal from the Opinion and Order of the Superior Court of Pennsylvania.

II.

NATURE OF THE CASE AND RULING BELOW

W. J. Dillner Transfer Company, appellant in this proceeding, holds, at Application Docket No. 61744, Folder 3, a certificate of public convenience issued on May 19, 1947, by the Pennsylvania Commission, which granted this carrier the following right:

> "To transport, as a Class C carrier, property in shipments, weighing five thousand (5,000) pounds or more, which because of its size or weight requires special handling and the use of special equipment such as trucks having winches or special equipment attached, or trucks of special body construction, or pole trailers, or drop-frame trailers, from points in the City of Pittsburgh, Allegheny County, and a radius of fifty (50) miles thereof, to other points in Pennsylvania.
>
> "It is Further Ordered that the application in-so far as it refers to all other transportation be and is hereby refused for lack of necessity."

On January 16, 1950, the Commission on its own motion instituted a Rule against W. J. Dillner Transfer Company, which charged the company with transportation of sheet steel and coils of steel in violation of appellant's so-called "heavy-hauling" rights as set forth.

Intervening and supporting the Commission's Rule, and intervening appellees in the Superior Court were Modern Transfer Company, Inc., Highway Express Lines, Inc., Philadelphia-Pittsburgh Carriers, Inc., Kramer Brothers Freight Lines, Inc., and Lancaster Transportation Company. These general commodity carriers alleged that the transportation involved was in direct and unlawful competition with the service furnished by them. John Benkart & Sons Company and Debolt Transfer, carriers having "heavy-hauling" rights generally similar to the right here held by Dillner also intervened in the Commission proceeding for the purpose of supporting Dillner's position that the transportation complained of in the Commission's Rule came within the scope of "heavy-hauling" rights.

Five hearings were held, briefs were filed, and oral argument heard before the Commission. The Commission upon completion of the hearings filed its Report and Order, dated August 11, 1952. The Commission found that W. J. Dillner Transfer Company had invaded a transportation field not contemplated in its certificate of public convenience; and that the phrase "to transport property, which because of its size or weight requires special handling and the use of special equipment," or generally similar phrases, contemplated the transportation of extremely heavy or bulky machinery, equipment or materials, such as power shovels, bulldozers, etc., and not sheet steel or coils of steel. The Commission also found that transportation of such property is a specialized transportation service which requires for its efficient conduct inherently special vehicular equipment. The Commission directed that W. J. Dillner Transfer Company immediately

cease and desist the transportation of sheet steel and coils of steel, or any other transportation not authorized by its certificates of public convenience.

W. J. Dillner Transfer Company, and intervenors, Debolt Transfer and John Benkart & Sons Company, then petitioned the Commission for rehearing, reargument, rescission, modification and supersedeas of its order, dated August 11, 1952. The Commission granted supersedeas pending further consideration and disposition of the petition. On November 26, 1952, the Commission denied the petition for rehearing, etc., of W. J. Dillner Transfer Company, and intervenors.

After an appeal was taken to the Superior Court of Pennsylvania by W. J. Dillner Transfer Company, Dillner petitioned the court for remand of the record to the Commission with instructions to incorporate Commission minutes, memoranda and letters. The Commission filed an answer in opposition to the petition. A reply to the answer, in the form of a letter, dated June 23, 1953, was filed with the court by Dillner. The Commisison by letter, dated June 26, 1953, to the Prothonotary, submitted an answer to the reply for the court's information, if the court was disposed to consider the correspondence. The Superior Court on July 13, 1953, ordered that argument on the petition for remand of record and answer thereto be heard at the time the appeal was listed for argument.

The Superior Court of Pennsylvania in its opinion found that the action of the Commission in interpreting the extent and nature of the certificate of public convenience issued by it was supported by substantial evidence; that the Commission, in its construction of

the authority granted to Dillner, considered the general language used as well as the history and record of the application proceeding. The Superior Court concluded that the record clearly established that the transportation of the coils of steel and the sheet steel did not require special handling and the use of special equipment; that such transportation was not within the scope of Dillner's certificated rights and, in fact, had specifically been denied by the Commission.

The Superior Court further found no reversible error in the refusal by the Commission of Dillner's petition for rehearing. With respect to the petition for remand of the record to incorporate Commission minutes, staff reports and letters, and with respect to the manner the Commission functioned, the court found that there was no denial of due process.

Appellant sought allowance of an appeal in the Supreme Court of Pennsylvania. The Supreme Court refused to allow the appeal. Appellant now seeks review by the Supreme Court of the United States.

III.

ARGUMENT IN SUPPORT OF MOTION TO DISMISS

(A) There is no jurisdiction, under the provisions of Title 28, U. S. Code, Section 1257(2) for this appeal

---

The statutory provision which is relied upon by appellant to sustain the jurisdiction of the Supreme Court of the United States to review the decision involved is Section 1257(2) of Title 28, U. S. Code.

The portion of that section of the Judicial Code upon which appellant relies is that portion which reads as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) *By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.*" (Italics ours)

It is submitted that the validity of the statute involved here, namely, Pennsylvania Public Utility Law, Act of May 28, 1937, P. L. 1053, as amended, Section 1001, Section 1005, Section 1008, and Section 1110, is *not*

questioned by appellant. Appellant questions only the interpretation of the statute as reflected in the order of the Commission and in its confirmation by the appellate courts in the Commonwealth of Pennsylvania.

The United States Supreme Court is bound by the construction given to state statutes by state courts: *Aero Mayflower Transit Co. v. Board of R. R. Commissioners of State of Mont.*, 332 U. S. 495, 68 S. Ct. 167, 92 L. Ed. 99 (1947). A decision of the state courts resting upon the construction and not upon the validity of a state statute does not present a federal question: *Ferry v. King County*, 141 U. S. 668, 35 L. Ed. 895 (1891).

(B) There is no substantial federal question presented in this appeal.

Appellant contends that it has been deprived of the right and benefit of procedural due process of law. It is submitted that at all stages of the proceeding before the Pennsylvania Commission and the appellate courts of Pennsylvania, appellant had a full hearing, the right to file a brief, and the right to orally argue this matter before the Commission and Court, and full opportunity to meet all the issues in this proceeding. The right of review to determine whether the findings of the Commission are based upon substantial evidence or whether they are arbitrary, oppressive, and therefore in excess of its powers, and whether the order made is responsive to and justified by such findings, satisfies the requirement of due process: *Arkansas Wholesale Grocers' Ass'n. v. Federal Trade Com'n.*, 18 F. (2) 866 (1927), certiorari denied 275 U. S. 533, 48, S. Ct. 30, 72 L. Ed. 411 (1927); *Asbury Truck Co. v. Railroad Commission of California*, 52 F. (2) 263 (1931), affirmed per curiam: 287 U. S. 570, 53 S. Ct. 94, 77 L. Ed. 501.

The contentions of appellant have been succinctly answered by President Judge Rhodes of the Superior Court of Pennsylvania in his opinion in this case when he said:

> "On the record before us we are of the opinion that the interpretation placed by the Commission on its grant of authority to Dillner at A. 61744,

Folder 3, was supported by substantial evidence, and that the cease and desist order was not erroneous as a matter of law, nor was it unreasonable or arbitrary.

"The rule to show cause issued by the Commission set forth the specific violations of Dillner's certificated rights. Dillner received notice, and the answer filed by it disclosed that it was fully aware of the issue and charges made against it. The matter was considered at several hearings and much evidence was presented by the interested parties. We think the issue was clear, and that the findings of the Commission were sufficiently definite to dispose of the question raised. Cf. Ryan v. Pennsylvania Public Utility Commission, 143 Pa. Superior Ct. 517, 521, 17 A. 2d 637. There was no denial of due process in this respect or in the manner the Commission functioned. See 42 Am. Jur., Public Administrative Law, § 25, p. 315; Humphrey v. United States, 295 U. S. 602, 55 S. Ct. 869, 79 L. Ed. 1611, 1619."

The Superior Court of Pennsylvania provided a complete judicial review of the order of the Commission and properly concluded that there was no error of law, lack of evidence to support the order of the Commission, or violation of constitutional rights.

CONCLUSION

The appeal of W. J. Dillner Transfer Company should be dismissed because (1) there is no jurisdiction, under the provisions of Title 28, U. S. Code, Section 1257(2) for this appeal, and (2) there is no substantial federal question presented in this appeal.

Respectfully submitted,
JACK F. ASCHINGER
Assistant Counsel
THOMAS M. KERRIGAN
Acting Counsel
For Pennsylvania Public Utility Commission.

Certificate of Service

I have this day mailed to all counsel of record herein copies of the within Motion to Dismiss in postpaid, properly addressed covers.

THOMAS M. KERRIGAN
Acting Counsel.

Dated March , 1955.

FILED
OCT 19 1955
HAROLD B. WILLEY, Clerk

No. 6054

W. J. [redacted],
Appellant,

vs.

PENNSYLVANIA [redacted],
Appellee,

and

[redacted],
Intervening Appellee.

On Appeal from the Supreme Court of the State of Pennsylvania
(Pittsburgh District)

MOTION TO DISMISS APPEAL

[redacted]
Paul R. [redacted]
[redacted]
Attorneys for Intervening Appellee.

[redacted]
Of Counsel.

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IN THE

Supreme Court of the United States.

October Term, 1954.

No. 600.

W. J. DILLNER TRANSFER COMPANY,
Appellant,

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.,
Appellees.

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA.
FROM THE PITTSBURGH DISTRICT.

MOTION TO DISMISS APPEAL.

I.

MOTION TO DISMISS APPEAL.

The parties for whom this motion is made were all intervening appellees below. This motion to dismiss the present appeal is made on their behalf and involves an order of the Pennsylvania Public Utility Commission as affirmed by the Superior Court of Pennsylvania in *W. J. Dillner Transfer Company v. Pennsylvania Public Utility Commission,* et al, 175 Pa. Superior Ct. 472, 107 A.2d 164 (1954). An application for allocatur was made to the Supreme Court of Pennsylvania and said Court denied the

petition "Per Curiam" on September 27, 1954. This motion to dismiss the appeal is filed in answer to the "Statement as to Jurisdiction" of W. J. Dillner Transfer Company filed in this Honorable Court and served on intervenors on February 17, 1955.

The "Statement as to Jurisdiction" filed by the appellant, W. J. Dillner Transfer Company, is divided into various sections and sub-sections. The chronology of the "Statement as to Jurisdiction" is difficult to follow and the exact basis of this appeal is not easily determinable from a reading of said "Statement as to Jurisdiction." The parties herein, however, will attempt to answer the "Statement as to Jurisdiction" and to submit an argument thereunder as to such points as it is deemed have been presented by the appellant.

II.

NATURE OF THE PROCEEDINGS.

The nature of the proceedings and the rulings below have been fully set forth in the Motion to Dismiss filed by the Pennsylvania Public Utility Commission and, therefore, there appears no need to repeat the same herein. However, it is important to state that the parties for whom this Motion is being filed intervened in the proceedings before the Pennsylvania Public Utility Commission and also intervened in the Court proceeding below. These parties are Modern Transfer Company, Inc.; Highway Express Lines, Inc.; Philadelphia-Pittsburgh Carriers, Inc.; Kramer Bros. Freight Lines, Inc.; and Lancaster Transportation Company. These parties are all common carriers by motor vehicle authorized by the Pennsylvania Public Utility Commission to perform transportation between points in Pennsylvania. The acts complained of against appellant were in direct competition with the services furnished by these parties. These parties have a direct interest in the outcome of the proceedings.

III.

ANSWER TO THE STATEMENT AS TO JURISDICTION OF THE APPELLANT AND ARGUMENT IN SUPPORT OF THE MOTION TO DISMISS THE PRESENT APPEAL.

A. Objection as to Jurisdiction.

The statutory provision relied upon by appellant to sustain the jurisdiction of the Supreme Court of the United States involved herein is Section 1257(2) of Title 28, U. S. Code.

The argument in objection to jurisdiction is fully set forth in the Motion of the Pennsylvania Public Utility Commission concerning whether or not this statute authorizes the present appeal. This argument will not be repeated here but will be augmented only by an additional statement.

A review of the cases cited by the appellant to sustain jurisdiction under the statute quoted above does not support appellant's argument. In each of the cases cited the basis for jurisdiction involved provisions of law not involved herein. These cases were *Morgan v. United States,* 304 U. S. 1; *Wong Yang Sung v. McGrath,* 339 U. S. 33; *Ohio Bell Telephone Co. v. Ohio Public Utilities Commission,* 301 U. S. 292; *Russell C. House Transfer and Storage Co. v. U. S.,* 189 Fed. 2nd 349.

The basis set forth by the appellant for jurisdiction does not support the present appeal and the Motion to Dismiss should be sustained.

B. Answer to the Questions Presented by the Appellant.

The appellant in its "Statement as to Jurisdiction" presents questions which it is presumed are the basis for the present appeal. An answer to each of the questions presented will be set forth below.

The first question presented by appellant is as follows:

> "(a) Does the statute in question operate to deprive appellant of the benefit of due process of law by permitting the same person or persons who prepared the complaint or Rule against appellant, and who conducted and prosecuted the hearings thereon, to also prepare and submit the decision in the case, for the Pennsylvania Public Utility Commission, without notice to appellant's counsel and thus withholding opportunity to file exceptions or a brief in opposition to the proposed decision?"

The question presented here has no factual basis on the record certified to your Honorable Court. Nowhere in the record is there any evidence whatsoever as to the person who prepared the complaint or rule against appellant. It is to be presumed that the complaint was filed in the normal manner by the Pennsylvania Public Utility Commission and it is a known fact as the record will reveal that appellant was given every opportunity to answer and to present evidence throughout the numerous hearings involved before the Pennsylvania Public Utility Commission. The hearings were conducted by an Examiner authorized by law to preside at said hearings and said Examiner had nothing to do whatsoever with the preparation of the complaint or Rule. There is nothing in the record to show otherwise and appellant in its "Statement as to Jurisdiction" states no fact to substantiate any other conclusion. There is nothing of record to show who prepared and submitted the decision in the case to the Pennsylvania Public Utility Commission. The report and order issued in this case purported to be that of the Pensylvania Public Utility Commission and there are no facts of record to show that anyone, other than the Pennsylvania Public Utility Commission, made the decision herein.

Appellant, in its "Statement as to Jurisdiction" has attached what is known as "Appendix B". In Appendix B

appellant without any foundation therefor states that counsel for the Commission submitted the proposed decision to the Commission. A review of the evidence and the record as certified to your Honorable Court will reveal that nowhere in the record, or elsewhere, have such facts been presented and, in fact, not only did the Pennsylvania Public Utility Commission make the order complained of, but the Pennsylvania Public Utility Commission made exhaustive findings of fact and conclusions of law to support its order. It may or may not be that the Pennsylvania Public Utility Commission relied on staff reports in determining the proper terminology to be used in its report and order, after having made full review of the record and after having come to its independent conclusion. Certainly, the Commission was entitled to do this. In *Norris & Hirshberg v. Securities and Exchange Commission,* 163 F. 2d 689, the Court had a similar situation before it and stated, as follows, commencing at page 693:

> "(8, 9) The Commission asserts, and upon remand doubtless will certify, that the summary was not considered as, or in lieu of, the actual evidence. That being true, it falls in the category of internal memoranda made during the decisional process which are never included in a record. An administrative agency, such as the respondent here, may utilize the services of subordinates to sift and analyze the evidence received by the trial examiner and subsequent use by the agency of a written resume of that sifting and analyzing is a part of its internal decisional process which may not be probed on appeal.
>
> As the summary is said to have been prepared by employees simply to aid in the Commission's examination of the record, its use appears to have been a part of the Commission's decisional procedure. We are not concerned with the manner in which the Commission give consideration to the record; it is enough if it cer-

> tifies that its findings arise therefrom. That much is required, but not more. It was, consequently, neither necessary nor proper for the digest of evidence used by the Commission to be made a part of the transcript, if the digest was used only as a help in considering the true record, as the Commission asserts."

In this case the Court also cited with approval and as controlling authority the case of *Morgan v. U. S.*, 298 U. S. 468.

Apparently appellant also intends to argue under this issue whether or not the Pennsylvania Public Utility Commission had the right to institute the proceedings and make a final judgment thereon. Clearly, it seems rather late to raise this argument. All administrative agencies of the Federal and State Governments, in order to carry out their functions, must have investigative powers and must have the power to make final judgment if the agency is to carry out its administrative functions as provided by Congress and the various State legislatures.

It is true that in conducting such proceedings adequate safeguards must be provided so that a full and fair hearing may be provided to all. In the present case a full and fair hearing was provided at all times and every conceivable issue which the appellant wished to raise was permitted. The nature of the charges were known to the appellant at all times and at no time did appellant claim that the nature of the charges were unknown to it.

Appellant states in its "Statement as to Jurisdiction" a vague thought that in the present case:

> "The question of borrowing and transplanting evidence from other cases into this case remains unanswered. Appellees did not attempt to justify or excuse such practice. Appellant was faced with some old transcripts of testimony and letters. It was impossible to cross-examine the persons involved in these papers forced upon us as evidence."

It is noteworthy that appellant does not refer to any particular part of the record nor to any particular evidence in the case. Certainly, evidence was not transplanted from other cases. The only evidence in the case was presented at the hearing and appellant had an ample opportunity to object or to explain all evidence submitted. It is true that the records of the predecessor company of appellant were present at the hearings but such were used only to contradict or as admissions. Nowhere was evidence transplanted from other cases.

The question presented above is without merit and the factual issues raised, if any, are not substantiated by the record as certified and such question as raised is insufficient to sustain its appeal.

The next question presented by the appellant in its "Statement as to Jurisdiction" is as follows:

> "(b) Does the statute authorize the Pennsylvania Public Utility Commission and the Courts below to arbitrarily ignore the prior interpretative decisions by the said Commission and to subject appellant to restrictions or penalties, although the Commission had previously held otherwise in a substantially similar case?"

There certainly is no Federal question presented by the above. Even if the Pennsylvania Public Utility Commission and the Courts below had not followed prior interpretative decisions there would have neither been error at the State level nor at the Federal level. Neither the Pennsylvania Public Utility Commission nor the Courts are bound by stare decisis. This has been decided by your Honorable Court on numerous occasions. However, in any event, the Commission and the Courts did not ignore any prior decisions and it is interesting to note that the appellant does not point out any prior decisions which even it believes to be contradictory. In numerous cases it has been held that the administrative agency's interpretation of its own order

and certificate cannot be disregarded by the Courts. See *I. C. C. v. G. & M. Motor Transfer Co., Inc.*, 64 F. Supp. 302 (D. C., N. C., 1945); *U. S. v. Louisville & Nashville RR. Co.*, 235 U. S. 314 (1914); *Adirondack Transit Lines, Inc. v. U. S.* 59 F. Supp. 503 (D. C., N. Y., 1944); *Dart Transit Co. v. Interstate Commerce Commission*, 110 F. Supp. 876 (District Court, Minnesota, 1953); and *Bowles v. Seminole Rock and Sand Company*, 325 U. S. 410.

Since the issue presented above involves no Federal question and is in conformity with State law, such question is not sufficient to sustain the jurisdiction of this Honorable Court in this matter and the appeal should be dismissed.

The next question presented by the appellant in its "Statement as to Jurisdiction" is as follows:

> "(c) Does the statute authorize the Commonwealth of Pennsylvania to deprive appellant of vested rights which it had prior to the enactment of the statute, and in substance to repudiate the certificate made by the Public Utility Commission or its predecessor in office?"

The issue presented above again involves no Federal question whatsoever. Certainly, the statute relied upon by the appellant does authorize even a cancellation of the certificate of the appellant if proper procedure is followed. However, in the present case the sole effect of the order of the Pennsylvania Public Utility Commission was to explain and interpret the certificate of public convenience outstanding and issued to it. A certificate of public convenience and necessity is not a vested right but is merely a privilege granted by the Pennsylvania Public Utility Commission by virtue of legislative authority. Such privilege is subject to interpretation and even cancellation if proper safeguards are provided.

It is interesting to note that appellant continues to speak of being deprived of certain rights. However, the

report and order of the Pennsylvania Public Utility Commission did not impose any penalties whatsoever and did not in any way affect or punish appellant for acts done in the past. The report and order of the Commission merely passed upon whether or not appellant had violated its certificate and then issued a warning that same should not be violated in the future. Clearly, this is authorized by the Pennsylvania Public Utility Law and, clearly, appellant was dealt with kindly and lightly in view of its persistent illegal operations. Needless to say, appellant had no vested rights prior to enactment of the statute and, certainly, appellant nowhere substantiates this statement either by facts or law.

There is nothing set forth in the issue above which presents a Federal question and the appeal should be dismissed.

The next question presented by the appellant in its "Statement as to Jurisdiction" is as follows:

> "(d) Did the Courts below fail to protect appellant's right to due process of law and equal protection of the law as required by the 14th Amendment to the Constitution of the United States?"

Apparently, the issue presented above is merely a catch-all question pertaining to the other specific questions. A review of the "Statement as to Jurisdiction" reveals no other issues not heretofore answered. However, it is submitted that the record as certified to your Honorable Court will reveal that at all stages of the proceedings before the Pennsylvania Public Utility Commission and the Appellate Court of Pennsylvania, a full hearing was allowed including the right to file briefs and the right to oral argument before the Pennsylvania Public Utility Commission and the Appellate Court.

Such being the case, it seems apparent that no Federal questions have been presented by the present appeal and,

certainly, appellant at no time has been denied due process of law or equal protection of the law as required by the 14th Amendment to the Constitution of the United States. The motion to dismiss the appeal should be sustained.

Only one other issue need be set forth herein. The issue to be argued below is not presented in any of the questions set forth in the "Statement as to Jurisdiction" of the appellant. However, in the "Statement as to Jurisdiction" filed by the appellant, under the heading "Statutes Involved", appellant states that the Pennsylvania Public Utility Law has a provision providing for the right to jury trial in certain types of cases.

It is true that the Pennsylvania Public Utility Law, under Section 1110, reserves the right of jury trial in any issue of fact where such right is secured either by the Constitution of Pennsylvania or the Constitution of United States. In the present case the right of trial by jury for violation of a privilege granted by the Legislature is certainly not of such type as to be secured either by the Constitution of Pennsylvania or of the United States. Furthermore, in the proceeding before the Commission, the appellant at no time requested a jury trial. This issue was also never raised on appeal or at any time by appellants until the present time. Apparently, since appellant does not set forth any argument concerning this issue, it is not seriously pressing the same.

IV.

CONCLUSION.

Since appellant has failed to reveal jurisdiction of this Honorable Court under any statute set forth and, since there is no substantial Federal question involved, the parties hereto move that the appeal be dismissed.

Respectfully submitted,

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Attorneys for Intervening Appellees.

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Of Counsel.

March 14, 1955.

Certificate of Service.

I have this day mailed to all Counsel of Record herein, copies of the within Motion to Dismiss Appeal, in postpaid, properly addressed covers.

PAUL F. BARNES

March 14, 1955.